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Counsel for Proposed Amici Curiae Members of Congress

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

STATE OF WASHINGTON, et al.,
Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States of America, et al.,

Defendants.

Case No. 1:20-cv-3127-SAB

MOTION OF MEMBERS OF
CONGRESS FOR LEAVE TO FILE
BRIEF AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

Noted for: September 17, 2020
Without Oral Argument

MOTION OF MEMBERS OF CONGRESS FOR
LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS
(Case No. 1:20-cv-3127-SAB)

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1 Pending before the Court is Plaintiffs’ motion for a preliminary injunction,
 2 seeking to bar the U.S. Postal Service from continued implementation of certain
 3 changes that have significantly affected postal service throughout the nation and that
 4 will further interfere with the daily lives of Americans and the November 2020
 5 election without the requested relief. The Members of Congress listed herein
 6 respectfully request leave to file the accompanying proposed *amici curiae* brief in
 7 support of Plaintiffs’ motion.

8 Proposed *amici curiae* Richard Blumenthal, Tammy Baldwin, Michael F.
 9 Bennet, Cory A. Booker, Sherrod Brown, Benjamin L. Cardin, Thomas R. Carper,
 10 Catherine Cortez Masto, Tammy Duckworth, Richard J. Durbin, Kirsten Gillibrand,
 11 Mazie K. Hirono, Amy Klobuchar, Patrick Leahy, Edward J. Markey, Jeffrey A.
 12 Merkley, Jack Reed, Jacky Rosen, Bernard Sanders, Jeanne Shaheen, Tina Smith,
 13 Chris Van Hollen, Elizabeth Warren, Sheldon Whitehouse, and Ron Wyden
 14 (collectively, “Members of Congress”) are members of the U.S. Senate, many of
 15 whom served when key components of the nation’s laws governing the U.S. Postal
 16 Service—including provisions pertinent to this case—were drafted, debated, and
 17 passed. Together, these elected officials represent the states of Connecticut,
 18 Wisconsin, Colorado, New Jersey, Ohio, Maryland, Delaware, Nevada, Illinois,
 19
 20

1 New York, Hawaii, Minnesota, Vermont, Massachusetts, Oregon, Rhode Island, and
 2 New Hampshire.¹

3 Based on their experience serving in Congress, the proposed *amici* understand
 4 that the Postal Reorganization Act of 1970, Pub. L. No. 91-375, 84 Stat. 719 (Aug.
 5 12, 1970) (codified at 39 U.S.C. § 101 *et seq.*), as amended by the Postal
 6 Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, 120 Stat. 3198
 7 (Dec. 20, 2006) (codified at 39 U.S.C. § 3600 *et seq.*), was designed to ensure that
 8 management of the Postal Service remains free from partisan politics and
 9 accountable to the American public, particularly when the Postal Service seeks to
 10 make nationwide changes in the nature of postal services. They therefore have a
 11 substantial interest in ensuring that this Court recognize that when the Postal Service
 12 and Postmaster General fail to follow the procedures set forth in 39 U.S.C. § 3661—
 13 which requires that the Postal Regulatory Commission and members of the public
 14 have the opportunity to weigh in before the Postal Service implements certain
 15 changes—they not only violate the plain text of § 3661 but also act counter to
 16 Congress’s plan in enacting that legislation.

17 This Court “has ‘broad discretion’ to appoint amicus curiae.” *Skokomish*
 18 *Indian Tribe v. Goldmark*, No. C13-5071, 2013 WL 5720053, at *1 (W.D. Wash.

19
 20 ¹ A full listing of proposed *amici* appears in the attached Appendix.

Oct. 21, 2013) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982),
 abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995)). “District
 courts frequently welcome amicus briefs from non-parties if the amicus has unique
 information or perspective that can help the court beyond the help that the lawyers
 from the parties are able to provide.” *Pakootas v. Teck Cominco Metals, Ltd.*, No.
 CV-04-256-LRS, 2011 WL 13238552, at *1 (E.D. Wash. Aug. 25, 2011) (quoting
Sonoma Falls Developers v. Nev. Gold & Casinos, Inc., 272 F. Supp. 2d 919, 925
 (N.D. Cal. 2003)). In addition, participation of *amici curiae* may be appropriate
 “where legal issues in a case have potential ramifications beyond the parties directly
 involved.” *Id.*

An *amicus* brief is “designed to supplement and assist in cases of general
 public interest, supplement the efforts of counsel, and draw the court’s attention to
 law that might otherwise escape consideration.” *Cnty. Ass’n for Restoration of
 Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999)
 (citing *Miller-Wohl Co., Inc. v. Commissioner of Labor and Indus.*, 694 F.2d 203,
 204 (9th Cir. 1982)); see also, e.g., *Russell v. Bd. of Plumbing Exam’rs*, 74 F. Supp.
 2d 349, 351 (S.D.N.Y. 1999) (“The primary role of the *amicus* is to assist the Court
 in reaching the right decision in a case affected with the interest of the general
 public.”); *Skokomish Indian Tribe*, 2013 WL 5720053, at *2 (granting leave to file
 because proposed *amici* may have “unique information or perspective that can help

the court”); *Pakootas*, 2011 WL 13238552, at *1 (same, and recognizing “legal issues in this case have potential ramifications beyond the parties directly involved”). There is no requirement that *amici* must be totally disinterested. *Funbus Systems, Inc. v. State of Cal. Public Utilities Com’n*, 801 F.2d 1120, 1125 (9th Cir. 1986); *Hoptowit*, 682 F.2d at 1260 (upholding district court’s appointment of Department of Justice and United States Attorney of Eastern District of Washington as *amici curiae* though they supported only one party’s arguments).

Here, the proposed *amici curiae* brief on behalf of Members of Congress satisfies these standards. It discusses, in depth, the federal law that Congress passed to require the Postal Service to follow certain procedures whenever the Postal Service seeks to change the nature of postal services in a way that will generally affect service on a substantially nationwide basis. As the brief explains, by failing to request an opinion from the Postal Regulatory Commission before making certain recent changes, the Postal Service has violated federal law and acted contrary to Congress’s plan in passing that law.

Counsel for all parties have consented to the filing of this brief. If the Court grants the motion, the Members of Congress request that the brief be considered filed as of the date of this motion.

For the foregoing reasons, leave to file the proposed *amici curiae* brief should be granted.

1 Dated: September 11, 2020.

2 Respectfully submitted,

3 CALFO EAKES LLP

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15 By /s/ Brianne J. Gorod
16 Elizabeth B. Wydra (DC Bar No. 483298)
17 (*pro hac vice* pending)
18 Brianne J. Gorod (DC Bar No. 982075)
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*Counsel for Proposed Amici Curiae Members of
Congress*

APPENDIX:

LIST OF PROPOSED *AMICI*

Blumenthal, Richard
Senator of Connecticut

Baldwin, Tammy
Senator of Wisconsin

Bennet, Michael F.
Senator of Colorado

Booker, Cory A.
Senator of New Jersey

Brown, Sherrod
Senator of Ohio

Cardin, Benjamin L.
Senator of Maryland

Carper, Thomas R.
Senator of Delaware

Cortez Masto, Catherine
Senator of Nevada

Duckworth, Tammy
Senator of Illinois

Durbin, Richard J.
Senator of Illinois

Gillibrand, Kirsten
Senator of New York

Hirono, Mazie K.
Senator of Hawaii

LIST OF PROPOSED *AMICI* – cont’d

Klobuchar, Amy
Senator of Minnesota

Leahy, Patrick
Senator of Vermont

Markey, Edward J.
Senator of Massachusetts

Merkley, Jeffrey A.
Senator of Oregon

Reed, Jack
Senator of Rhode Island

Rosen, Jacky
Senator of Nevada

Sanders, Bernard
Senator of Vermont

Shaheen, Jeanne
Senator of New Hampshire

Smith, Tina
Senator of Minnesota

Van Hollen, Chris
Senator of Maryland

Warren, Elizabeth
Senator of Massachusetts

Whitehouse, Sheldon
Senator of Rhode Island

Wyden, Ron
Senator of Oregon

APPENDIX
(Case No. 1:20-cv-3127-SAB) - 2A

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

Dated: September 11, 2020.

/s/ Erica Knerr

Erica Knerr